
DIRECTOR'S ORDER UNDER SECTION 157
OF THE *CONSUMER PROTECTION ACT* (formerly the *Fair Trading Act*)
TO
WESLEY HERMAN DYCK
AND
ANY EMPLOYEE, REPRESENTATIVE, AGENT OR ASSOCIATE OF
WESLEY HERMAN DYCK

This Director's Order was issued under s. 157(1) of the *Fair Trading Act* in response to, in the opinion of the Director, contraventions of the Act. As mandated by s. 157.1(1) of the *Fair Trading Act*, this Director's Order is part of the public record.

Albertans who have questions or concerns about this business are encouraged to contact the Service Alberta Consumer Contact Centre at 1-877-427-4088.

For more information on the *Fair Trading Act*, business licensing in Alberta or to search for a licensed business, please click here:

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DIRECTOR'S ORDER UNDER SECTION 157
OF THE CONSUMER PROTECTION ACT
TO
WESLEY HERMAN DYCK

FINDINGS

Service Alberta has investigated allegations related to contraventions of the *Consumer Protection Act* and the Prepaid Contracting Business Licensing Regulation and found evidence that:

- Wesley Herman Dyck, through WD Contracting Ltd., contravened sections 6(4)(a) and (c), 35, 31(2), and 104 of the Consumer Protection Act (CPA) and section 10(2) of Prepaid Contracting Business Licensing Regulation (PCBLR).

Based on the available evidence, the Director has reached the opinion Wesley Herman Dyck, through WD Contracting Ltd., contravened the regulatory framework established under the *Consumer Protection Act* and Prepaid Contracting Business Licensing Regulation, and failed to adhere to the legislative and regulatory framework required of prepaid contracting businesses operating in Alberta. The Director has also reached the opinion that Wesley Herman Dyck, through WD Contracting Ltd., committed unfair business practices under the *Consumer Protection Act*.

KEY LEGISLATION

Consumer Protection Act RSA 2000 Chapter C-26.3

- s. 6 (4) Without limiting subsections (2) and (3), the following are unfair practices if they are directed at one or more consumers or potential consumers:
- (a) a supplier's doing or saying anything that might reasonably deceive or mislead a consumer;
 - (c) a supplier's representation that goods or services have sponsorship, approval, performance, characteristics, accessories, ingredients, quantities, components, uses, benefits or other attributes that they do not have;
- s. 24 In this Part,
- (a.1) "direct sales contract" means a consumer transaction that is a contract, other than a time share contract, in which

- (i) the consideration for the goods or services exceeds an amount specified in the regulations, and
- (ii) the contract is negotiated or concluded in person at a place other than the supplier's place of business or at a place other than a market place, auction, trade fair, agricultural fair or exhibition,

and includes an offer to buy goods or services or to enter into a contract mentioned in subclause (i) or (ii);

- s. 28 (1) In addition to the right of cancellation under section 27, a consumer may cancel a direct sales contract in the circumstances set out in this section.
- (2) A consumer may cancel a direct sales contract within one year from the date the direct sales contract is entered into,
- (a) if the supplier was required to be licensed under Part 10 and was not licensed at the time the direct sales contract was concluded, or
 - (b) if the direct sales contract does not include all the information required under section 35.
- (3) A consumer may cancel a direct sales contract within one year from the date the direct sales contract is entered into if the supplier
- (a) does not deliver the goods within 30 days from the delivery date specified in the direct sales contract or an amended delivery date agreed on in writing by the consumer and the supplier, or
 - (b) does not begin the services within 30 days from the commencement date specified in the direct sales contract or an amended commencement date agreed on in writing by the consumer and the supplier.
- s. 29 (1) A direct sales contract is cancelled on the giving of a notice of cancellation in accordance with this section.
- (2) A notice of cancellation may be expressed in any way as long as it indicates the intention of the consumer to cancel the direct sales contract.
- (3) The notice of cancellation may be given by any means, including, but not limited to, personal service, registered mail, courier or telecopier or by any other method, including orally, by which the consumer can provide evidence of the date that the consumer cancelled the direct sales contract.
- (4) Where the notice is given other than by personal service or orally, the notice of cancellation is deemed to be given when sent.
- s. 31 (2) Within 15 days after a direct sales contract is cancelled, the supplier must refund to the consumer all money paid by the consumer and return to the consumer's premises any trade-in or an amount equal to the trade-in allowance.
- s. 35 A written direct sales contract must include
- (b) the supplier's name, business address, telephone number and, where applicable, fax number;

- (d) the date and place at which the direct sales contract is entered into;
 - (f) a statement of cancellation rights that conforms with the requirements set out in the regulations;
 - (g) the itemized price of the goods or services, or both;
 - (j) in the case of a sales contract for the future delivery of goods, future provision of services or future delivery of goods together with services, the delivery date for the goods or commencement date for the services, or both;
 - (k) in the case of a sales contract for the future provision of services or the delivery of goods together with services, the completion date for providing the services or the goods together with services;
- s. 104 (1) No person may engage in a designated business unless the person holds a licence under this Act that authorizes the person to engage in that business.
- s. 157 (1) If, in the opinion of the Director
- (a) a person is contravening or has contravened this Act or the regulations,
 - (b) a regulated person is using any form, agreement, letter or other document that is misleading or contains a term that misrepresents this Act or the regulations, or
 - (c) a print, broadcast or electronic publisher, including but not limited to a publisher of telephone directories and Internet listings, is publishing or has published an advertisement that is misleading or contains a term that contravenes this Act or the regulations,
- the Director may issue an order directed to the person or publisher.
- (2) An order may direct the person or publisher
- (a) to stop engaging in anything that is described in the order, subject to any terms or conditions set out in the order, and
 - (b) to take any measures specified in the order, within the time specified in the order, to ensure that this Act and the regulations are complied with.
- s. 158.1 (1) If the Director is of the opinion that a person
- (a) has contravened a provision of this Act or the regulations, or
 - (b) has failed to comply with a term or condition of a licence issued under this Act or the regulations, the Director may, by notice in writing given to the person, require the person to pay to the Crown an administrative penalty in the amount set out in the notice.
- (2) Where a contravention or a failure to comply continues for more than one day, the amount set out in the notice of administrative penalty under subsection (1) may include a daily amount for each day or part of a day on which the contravention or non-compliance occurs or continues.
- (3) The amount of an administrative penalty, including any daily amounts referred to in subsection (2), must not exceed \$100 000.
- (4) Subject to subsection (5), a notice of administrative penalty shall not be given more than 3 years after the day on which the contravention or non-compliance occurred.
- (5) Where the contravention or non-compliance occurred in the course of a consumer transaction or an attempt to enter into a consumer transaction, a notice of administrative

penalty may be given within 3 years after the day on which the consumer first knew or ought to have known of the contravention or non-compliance but not more than 8 years after the day on which the contravention or non-compliance occurred.

- s. 158.2 Before imposing an administrative penalty in an amount of \$500 or more, the Director shall
- (a) advise the person, in writing, of the Director's intent to impose the administrative penalty and the reasons for it, and
 - (b) provide the person with an opportunity to make representations to the Director.

Designation of Trades and Businesses Regulation, Alta Reg 178/1999 ("DOTABR")

- s.5 (1) Part 10 of the *Consumer Protection Act* applies to the prepaid contracting business.
- (2) In this section,
- (a) "construction or maintenance contract" means a contract for the purpose of
 - (i) constructing, altering, maintaining, repairing, adding to or improving
 - (A) a building that is used or is to be used by the owner, occupier or person in control of it as the owner's, occupier's or person's own private dwelling,
 - or
 - (B) a structure that is to be used in connection with a building referred to in paragraph (A) and that is located on the same parcel as that building,
 - or
 - (ii) altering, maintaining or improving real property to be used in connection with a building or structure referred to in subclause (i), but does not include a contract referred to in subsection (3);
 - (b) "prepaid contract" means a construction or maintenance contract in which all or part of the contract price is to be paid before all the goods or services called for in the contract are provided;
 - (c) "prepaid contracting business" means the activities of soliciting, negotiating or concluding in person, at any place other than the seller's place of business, a prepaid contract.

Prepaid Contracting Business Licensing Regulation, Alta Reg 185/1999 ("PCBLR")

- s. 1 In this Regulation,
- (a) "Act" means the Consumer Protection Act;
 - (b) "licence" means a prepaid contracting business licence established by this Regulation;
 - (c) "prepaid contract" means a prepaid contract as defined in section 5 of the Designation of Trades and Businesses Regulation;
 - (d) "prepaid contracting business" means the business designated as the prepaid contracting business under the *Designation of Trades and Businesses Regulation*.
- s.2 (1) The class of licence to be known as the prepaid contracting business licence is established.
- (2) A person who holds a prepaid contracting business license is authorized to engage in the prepaid contracting business.

(3) The Director may specify in a licence the class of goods or services that may be sold under the licence.

(4) No licensee may engage in the prepaid contracting business in respect of a class of goods or services unless that class is specified in the licensee's licence.

- s.10 (1) This section applies to prepaid contracts in which the value of the goods or services to be provided under the contract is more than \$200.
- (2) A person who is engaged in the prepaid contracting business must ensure that every prepaid contract that the person enters into
- (a) complies with the requirements of section 35 of the Act, and
 - (b) sets out quality or types of materials to be used under the contract and the services and work to be carried out under the contract.
- (3) A person who is engaged in the prepaid contracting business and who enters into a prepaid contract with a buyer must provide a copy of the signed contract to the buyer
- (a) on or before the date work commences under it, or
 - (b) within 10 days after the buyer signs the contract,
- whichever occurs first.

ORDER

- **WESLEY HERMAN DYCK must cease all unlicensed prepaid contracting activity, to comply with all contract and refund requirements under the CPA and regulations, and to cease committing all unfair practices under the CPA.**

NON COMPLIANCE WITH ORDER

ANY PERSON WHO FAILS TO COMPLY WITH AN ORDER OF THE DIRECTOR UNDER SECTION 157 OF THE CONSUMER PROTECTION ACT CONTRAVENES THE ACT AND IS GUILTY OF AN OFFENCE AND MAY BE SUBJECT TO PROSECUTION PURSUANT TO SECTION 163 OF THE CONSUMER PROTECTION ACT.



Joseph O'Kurley
Director of Fair Trading (as delegated)
February 10, 2022